

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Douglas J. Carpenter,  
Complainant,

vs.

Jeffrey T. Walker,  
Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS  
AND ORDER**

The above-entitled matter came on for an evidentiary hearing on October 20, 2010, before a panel of three Administrative Law Judges: Eric L. Lipman (Presiding Judge), Manuel J. Cervantes, and James F. Cannon. The OAH hearing record closed at the end of the hearing that day.

Douglas Carpenter appeared on his own behalf without counsel. He was assisted by Winton Mason. Ron Meshbesh, Esq., Meshbesh & Spence, LTD, represented Jeffrey Walker (Respondent).

**NOTICE**

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

**STATEMENT OF ISSUES**

Did Respondent Jeffrey Walker violate Minnesota Statute § 211B.06 by intentionally preparing and disseminating campaign material that he knew was false or that he communicated with reckless disregard as to whether it was false?

The panel concludes that the Complainant failed to establish that the Respondent violated Minn. Stat. § 211B.06, and therefore the Complaint is dismissed.

Based upon the entire record, the panel makes the following:

## **FINDINGS OF FACT**

1. The Complainant, Douglas J. Carpenter, is a candidate in the November 2010 election for Itasca County Auditor/Treasurer.

2. The Respondent, Jeffrey Walker, is the incumbent Itasca County Auditor/Treasurer and is seeking re-election.

3. The Board of Accountancy (Board) first certified the Respondent as a Certified Public Accountant (CPA) in 1984.<sup>1</sup>

4. Persons holding CPA certifications are required to renew their licenses by December 31<sup>st</sup> of each year.<sup>2</sup>

5. As part of the requirements for maintaining a CPA certification, accountants are required to accrue 120 hours (including 8 hours of ethics credit) of continuing professional education within a three year fiscal period. For any given year, CPAs are required to accrue a minimum of 20 hours of continuing profession education.<sup>3</sup>

6. It was the practice of the Board to send to all CPAs certification renewal notices in October, and a second and final notice in December, reminding them to renew their certifications before the end of the year.<sup>4</sup>

7. The Board sent CPA certificate renewal notices to the Respondent in 2008.<sup>5</sup>

8. On or about November 5, 2008, the Respondent submitted his sole proprietor firm permit renewal application for 2009 to the Board of Accountancy (Board).<sup>6</sup> The Board renewed Respondent's firm permit.

9. The Respondent did not submit a CPA certification renewal application for year 2009 before December 31, 2008. His CPA certificate lapsed on December 31, 2008.<sup>7</sup>

10. By letter dated February 4, 2009, the Board notified the Respondent that his CPA certificate expired on December 31, 2008, and was no longer valid. The letter

---

<sup>1</sup> Testimony of Doreen Frost.

<sup>2</sup> Minn. R. 1105.2500(A).

<sup>3</sup> Test. of D. Frost.

<sup>4</sup> Test. of D. Frost; Exs. 18 and 19.

<sup>5</sup> Test. of D. Frost.

<sup>6</sup> Ex. 15.

<sup>7</sup> Test. of D. Frost.

stated further that in order to renew his certificate, the Respondent would have to pay a \$50 delinquency fee in addition to the renewal fee.<sup>8</sup>

11. On or about October 20, 2009, the Respondent submitted to the Board his Sole Proprietor Firm Permit renewal application for the year 2010.<sup>9</sup>

12. The Board renewed the Respondent's sole proprietor firm permit for year 2010 on or about November 5, 2009, even though the Respondent's CPA certification had expired.<sup>10</sup> The permit lists the Respondent's name on the permit as: Jeffrey Thomas Walker CPA.<sup>11</sup>

13. After being contacted by an advertising salesman for the *Grand Rapids Herald Review*, the Respondent placed a campaign advertisement in support of his candidacy for Itasca County Auditor/Treasurer in the September 8, 2010, edition of the newspaper. The Respondent used the same advertisement he had used for his 2006 campaign. In the advertisement, "certified public accountant" is listed as one of the Respondent's qualifications.<sup>12</sup>

14. On September 16, 2010, Winton Mason, a supporter of Mr. Carpenter, inquired of the Minnesota Board of Accountancy as to the status of Mr. Walker's CPA certificate. On September 16, 2010, Steven Renville, an investigator with the Board, replied that Mr. Walker's CPA certificate expired on December 31, 2008, and that Mr. Walker cannot use the designation "CPA" until his certificate has been "brought to current status."<sup>13</sup>

15. On October 14, 2010, the Respondent submitted applications to the Board to renew his CPA certification for the years 2009 and 2010. The Respondent included with his applications an accounting of the continuing professional education hours he accrued during fiscal years 2007-2009.<sup>14</sup> The Respondent fulfilled his continuing professional education requirements for fiscal years 2007-2009.<sup>15</sup>

16. The Board renewed the Respondent's CPA certificate on or about October 18, 2010.<sup>16</sup>

---

<sup>8</sup> Ex. 14.

<sup>9</sup> Ex. 16.

<sup>10</sup> Exs. 4, 9, and 15. See, Minn. Stat. § 326A.05, subd. 3, which requires a majority of the ownership of the CPA firm to hold valid certificates.

<sup>11</sup> Ex. A.

<sup>12</sup> Exs. B, 5, 6 and 12.

<sup>13</sup> Ex. 1.

<sup>14</sup> Ex. 17; Test. of D. Frost.

<sup>15</sup> Test. of D. Frost.

<sup>16</sup> Test. of D. Frost.

17. The Respondent is currently a CPA in good standing.<sup>17</sup>

Based upon the foregoing Findings of Fact, the panel makes the following:

### CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Campaign material is defined to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election . . . .”<sup>18</sup> The advertisement that the Respondent placed in the *Grand Rapids Herald Tribune* is campaign material within the meaning of that statute.<sup>19</sup>

3. Minn. Stat. § 211B.06, subd. 1, provides, in part:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

4. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.06, relating to false campaign material, is clear and convincing evidence.<sup>20</sup>

5. The Complainant has failed to demonstrate that the Respondent violated Minn. Stat. § 211B.06 because the evidence is insufficient to prove that the Respondent knew that statement was false or that he communicated it with a reckless disregard as to whether it was false.<sup>21</sup>

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

---

<sup>17</sup> Test. of D. Frost.

<sup>18</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>19</sup> Ex. J-1.

<sup>20</sup> Minn. Stat. § 211B.32, subd. 4.

<sup>21</sup> See *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App. 2006), *rev. denied* (Minn. July 19, 2006) (*citing*, *Chafoulias v. Peterson*, 668 N.W.2d 642, 654-65 (Minn. 2003) interpreting the “reckless disregard” standard to require that a defendant make a statement while subjectively believing that the statement is probably false.)

## **ORDER**

IT IS ORDERED:

That the Complaint in this matter is DISMISSED.

Dated: October 25, 2010

/s/ Eric L. Lipman

ERIC L. LIPMAN

Presiding Administrative Law Judge

/s/ Manuel J. Cervantes

MANUEL J. CERVANTES

Administrative Law Judge

/s/ James F. Cannon

JAMES F. CANNON

Administrative Law Judge

Reported: Digitally recorded; No transcript prepared

## **MEMORANDUM**

The Complainant maintains that the statement in the Respondent's campaign advertisement that he is a Certified Public Accountant is false and that the Respondent knew it was false or disseminated it with reckless disregard as to whether it was false in violation of Minn. Stat. § 211B.06.

There is no dispute that the Respondent's CPA certification expired on December 31, 2008, and that the Respondent did not submit a renewal application until October 14, 2010. There is also no dispute that the Respondent placed the advertisement in support of his candidacy in the local newspaper listing "Certified Public Accountant" as one of his qualifications.

Minn. Stat. § 211B.06 prohibits a person from intentionally participating in the preparation, dissemination, or broadcast of campaign material with respect to the personal or political character or acts of a candidate that is designed or tends to injure

or defeat a candidate, and which the person knows is false or communicates to others with reckless disregard of whether it is false.

The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*.<sup>22</sup> Based upon this standard, the Complainant has the burden at the hearing to prove by clear and convincing evidence that the Respondent either published the statements knowing the statements were false, or that he “in fact entertained serious doubts” as to the truth of the publication or acted “with a high degree of awareness” of its probable falsity.<sup>23</sup> A statement may have been made with actual malice if it is fabricated or is so inherently improbable that only a reckless man would put it in circulation.<sup>24</sup>

To be found to have violated section 211B.06, therefore, two requirements must be met: (1) a person must intentionally participate in the preparation or dissemination of false campaign material; and (2) the person preparing or disseminating the material must know that the item is false, or act with reckless disregard as to whether it is false.

As to the first element of the statute, the test is objective: The statute is directed against false statements of fact. The false statement of fact in this case is the Respondent’s claim in his September 8<sup>th</sup> advertisement to be a Certified Public Accountant when his certification had in fact lapsed. With respect to the second element of the statute – namely, Respondent’s awareness surrounding his claim of licensure – the test is subjective: The Complainant must prove by clear and convincing evidence that the Respondent “in fact entertained serious doubts” as to the truth of the publication or acted “with a high degree of awareness” of its probable falsity.<sup>25</sup> Otherwise, his claim for relief fails.

The panel concludes that the Complainant has failed to put forward clear and convincing evidence that the Respondent knew his claim to be a CPA was false or that he published the claim while subjectively believing that it was probably false. Instead, the evidence as a whole supports finding that Respondent’s failure to renew his certification was at most an oversight on his part. The fact that the Respondent continued to renew his sole proprietorship CPA permit and continued to accrue the required continuing professional education hours runs counter to any argument that he entertained serious doubts as to the truth of his certification claim. Respondent has been a CPA in good standing for over 20 years and would have been renewed but for the missed filing fees.

---

<sup>22</sup> *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *State v. Jude*, 554 N.W.2d 750, 754 (Minn. App. 1996).

<sup>23</sup> See *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); see also *Riley v. Jankowski*, 713 N.W.2d 379, 401 (Minn. App. 2006), *rev. denied* (Minn. July 20, 2006).

<sup>24</sup> *St. Amant*, 390 U.S. at 732.

<sup>25</sup> *St. Amant*, 390 U.S. at 731; *Garrison v. Louisiana*, 379 U.S. at 74; *Riley v. Jankowski*, 713 N.W. 2d 379 (Minn. App.) *review denied* (Minn. 2006).

Because the Complainant failed to put forward any evidence to suggest the Respondent knew his statement that he was a CPA was false as of September 8, 2010, or that he made the statement with reckless disregard as to whether it was false, the Complaint must be dismissed.

**E.L.L., M.J.C., J.F.C.**